

This Frequently Asked Questions (FAQ) document is in response to IC 4-6-15 (as added by HEA 1001-2021) regarding Opioid Litigation and Settlements.

- **What is IC 4-6-15?**
 - IC 4-6-15 is the statute that provides the framework for the state and political subdivisions to use in administering opioid litigation and settlements. The statute lays out the distribution of settlement proceeds to the state and participating local units and requires that 70% of all proceeds be used for opioid abatement activities. The statute gives local units that filed opioid litigation before 1/1/2021 the ability to opt-out from the state's settlement plan.
- **What are the terms of the proposed settlements that are on the table?**
 - On July 21, 2021, Attorney General Rokita announced a \$507 million settlement agreement for Indiana with McKesson, Cardinal Health, and AmerisourceBergen as well as Johnson & Johnson. Indiana is expected to receive \$507 million over 18 years if 100% of local units participate in the state's settlement, and the funds would be allocated among the state and local units according to IC 4-6-15.
 - Purdue Pharma is in bankruptcy and there is a proposed Chapter 11 plan that would send funds to state and local units of governments, though the amount is unknown at this time. If a settlement is reached, the Purdue Pharma funds will be solely used for abatement activities contemplated by the Chapter 11 plan.
- **What is at risk financially if local units do not opt-in to the state's settlement plan?**
 - For the settlement with Johnson & Johnson and the three big distributors (McKesson, AmerisourceBergen, and Cardinal Health), local units would be entitled to half of the settlement proceeds. This amount is currently estimated to be \$250 million paid over 18 years, assuming that all local units opt-in.
 - If a local unit opts-out, the opting-out unit will not share in the distribution of the dollars allocated as the local share as it pertains to the state's settlement. The opted-out unit may only receive funds if they settle separately or litigate their claims, which will require the local unit to devote time and resources with an unknown chance of success when compared to the guaranteed distribution from the state settlement.
 - If not enough local units opt-in to the state settlement, then some or all of the estimated allocation will not be distributed to the local units or the state. This means that less funding will be made available to address opioid use in Hoosier communities.
- **How much funding could a local unit expect to receive under the state law if they opted-in?**
 - Per the allocation plan, 70% of all settlement funds must be used for opioid use treatment, education, or prevention ("restricted funds"), and the remaining 30% may be used for any government purpose ("unrestricted funds"). Under IC 4-6-15, local units would receive half of the "restricted funds," or 35% of the total state settlement, and half of the "unrestricted funds," or 15% of the total state settlement. A local unit that has opted-in to the state settlement should expect to receive a per capita share of the unrestricted settlement dollars and its share of the restricted funds that must be used for opioid use treatment, education, or prevention, as directed by the local units in a region. Additionally, the state will invest its share of the "restricted funds" in local communities for opioid use treatment, education, and prevention.
- **Please explain further the characterization that one-half of the 70% state settlement funds will go to local units, as the statutory language provides that these funds go to "eligible community-based treatment, education, and prevention programs."**
 - The legislation anticipates that one-half of the 70% of "restricted" settlement funds received would be used by local units for opioid use treatment, education, and prevention programs as determined and directed by the local units in a region, rather than dictated by the state. The Family and Social Services Administration (FSSA) will act as the pass-through agency for these funds. Since 2017, FSSA has demonstrated their ability to distribute funding to local communities and regional areas aimed to battle opioid use disorder. For example, funds have been used to support and train workforce, expand access to medication for opioid use disorder, develop and implement mobile response teams and infrastructure development.

- **How will a local unit receive funds if they have opted-in?**
 - A local unit should expect to receive their per capita share of "unrestricted funds" via wire transfer from the State. The 35% set-aside for opioid use treatment, education, or prevention will be distributed regionally by FSSA according to determinations made by local units. FSSA is in the process of developing the details of the distribution process, but the state is committed to ensuring that these funds reach programs in local communities meant to address opioid use as the statute requires.
- **How will FSSA identify regions?**
 - Statute requires FSSA to divide the state into regions based on population. It is anticipated that FSSA will use existing regions that are utilized for other FSSA programs, while Marion and Lake Counties will each be a separate region. Data related to opioid use, including overdoses and deaths, may be considered in determining regional funding allocations.
- **What are the deadlines for opting in or out to the settlement?**
 - The deadline to opt-out was June 30, 2021. Local units have 60 days from the date of their opt-out resolution to opt back into the state settlement. Local units must pass a resolution prior to the 60-day opt-in date, which states that the local unit is opting back into the state settlement.
- **How can a local unit that had previously opted-out, opt back into the settlement?**
 - The local unit who intends to opt back in would need to submit the name and contact information for the subdivision to the Office of the Attorney General as well as a copy of the resolution adopted to opt back in to the state settlement by the opt in deadline.
- **What is the effect of a local unit's decision to opt-in or opt-out on its ability to independently pursue litigation against opioid parties it had sued before January 1, 2021, if the state had not yet sued?**
 - If the local unit decides to independently pursue the lawsuit, then it will not receive funds from any settlement that the state enters into with that company.
- **If a local unit were to opt-in and then participate in the state's settlements with Purdue Pharma, McKesson, Cardinal Health, and AmerisourceBergen, could the local unit also continue its pending claims against the other 20+ opioid entities it has already sued?**
 - The statutory language only applies if the state, through the attorney general, enters into a settlement with other opioid parties.
- **If the state later sues other opioid parties (like CVS) or enters a global opioid settlement in the future, would a local unit receive any funds from those settlements?**
 - If the local unit opts-in, the unit will receive funds from the state settlement through the distribution process outlined in IC 4-6-15. If the local unit opts-out, they will not be guaranteed any proceeds from future opioid settlements entered into by the state.
- **What are the "specific attorney's fee, costs, and expenses fund" set up by the settlement agreement?**
 - The settlement with the Distributors and Johnson & Johnson will include a fund to which the attorneys for local units can apply to in order to receive payment for attorney's fees, costs, and expenses. This type of fund is sometimes called a common or mutual benefit fund where money from the overall settlement agreement is set aside to pay some portion of the attorney's fees for litigating parties. The settlement agreement requires that attorneys who apply for fees from the fund waive their contract with the subdivision that is participating in the settlement.
- **Can the subdivisions pay attorney fees from their unrestricted 15% share of the settlement proceeds?**
 - Yes, the 15% share is unrestricted and can be used by the subdivisions for any purpose, including paying attorney's fees and expenses.
 - If a local unit's attorney applies for fees from the national attorney fee fund and waives their rights under a contingency fee agreement with the local unit, it is possible for the subdivision to use their 15% share to make additional payments to subdivision's attorney through a separate alternative payment agreement.